

IN THE SUPREME COURT OF IOWA

**Supreme Court Docket No. 17-1555
Grievance Commission Docket No. 804**

**IOWA SUPREME COURT
ATTORNEY DISCIPLINARY BOARD,**

Complainant-Appellee,

vs.

SANDRA ESTHER SUAREZ-QUILTY,

Respondent-Appellant.

**APPEAL FROM THE REPORT OF THE IOWA SUPREME COURT
GRIEVANCE COMMISSION**

APPELLEE'S BRIEF

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II. OTHER AUTHORITIES

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Iowa Code § 714.1(2)2, 20, 24

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Iowa Rule Appellate Procedure

Rule 6.903(1)(g)(1)31

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. WHETHER REVOKING RESPONDENT'S LICENSE IS THE APPROPRIATE SANCTION WHEN THE MISCONDUCT INVOLVES ETHICAL RULE VIOLATIONS BASED ON VIOLATIONS OF THE IOWA CRIMINAL STATUTES DEFINING THEFT (Count VII) AND CONVERSION (Count VIII).

Cases:

Iowa Sup. Ct. Bd. of Prof. Ethics & Conduct v. Bell,
650 N.W.2d 648 (Iowa 2002)

Iowa Sup. Ct. Atty. Disc. Bd. v. Carroll,
721 N.W.2d 788 (Iowa 2006)

Iowa Sup. Ct. Atty. Disc. Bd. v. Carter,
847 N.W.2d 228 (Iowa 2014)

Iowa Sup. Ct. Atty. Disc. Bd. v. Green,
888 N.W.2d 398 (Iowa 2016)

Iowa Sup. Ct. Atty. Disc. Bd. v. Guthrie,
901 N.W.2d 493 (Iowa 2017)

Iowa Sup. Ct. Atty. Disc. Bd. v. Nelsen,
807 N.W.2d 259 (Iowa 2011)

Iowa Sup. Ct. Disc. Bd. v. Reilly,
708 N.W.2d 82 (Iowa 2006)

Iowa Sup. Ct. Atty. Disc. Bd. v. Stowe,
830 N.W.2d 737 (2015)

Iowa Sup. Ct. Atty. Disc. Bd. v. Strand,
841 N.W.2d 600 (Iowa 2014)

A. Whether the Court should consider mitigating circumstances.

Cases:

Iowa Sup. Ct. Atty. Disc. Bd. v. Guthrie,
901 N.W.2d 493 (Iowa 2017)

ROUTING STATEMENT

The Board agrees with the Routing Statement set forth in Respondent's Brief.

STATEMENT OF THE CASE

Nature of the Case. This is an attorney disciplinary action in which the Grievance Commission ("Commission"), after considering the pleadings, the *Stipulation*, the Board's exhibits and the parties' briefs, recommended that Respondent's law license be revoked. App. pp. 99-134 (*Findings of Facts, Conclusions of Law and Recommendation ("Findings")*). Respondent filed a timely *Notice of Appeal*. (App. pp. 135-36)

Course of Proceedings and Disposition. On September 22, 2014, the Board filed an original three count complaint.

On January 21, 2015, after a motion to amend the complaint was granted, the Board filed a (first) amended complaint adding Count IV.

On August 4, 2015, the Board filed a (second) motion to amend the complaint, but withdrew the motion when Respondent filed a motion to continue on August 26, 2015. Respondent's motion requested that the hearing set for September 14-15 be continued stating Respondent was experiencing personal issues necessitating her to seek alcohol and mental

health treatment. On August 28, the Commission cancelled the grievance commission hearing and set a status hearing.

On October 14, 2015, Respondent pled guilty to two OWI 3rd offenses in Polk County and was sentenced to prison. App. p. 143 (Ex. 27); App. pp. 152-55 (Ex. 28). Respondent was incarcerated at the Women's Prison in Mitchellville until January 2016 at which time she was transferred to the inpatient Continuum Program at Broadlawns Hospital. During this period of time, the panel president scheduled a series of telephonic hearings with counsel to review Respondent's status.¹

On February 16, 2016, a status hearing was held and the Board's counsel made an oral motion to file a (third) amended complaint to add new counts referred to grievance by the Board. In the meantime, new *Complaint Affidavits* were received leading to the addition of Count VIII to the 5th *Complaint*. App. pp. 69-74 (Count VIII).

On April 26, 2016 another status hearing was held. The order following the hearing indicated Respondent had been paroled and was transitioning from the OWI Continuum at Broadlawns Hospital to independent living.

On November 15, 2016, a final status hearing was held. The Board's

¹ Status hearings were held on November 2, 2015, February 16, 2016, April 26, 2016 and November 15, 2016.

oral motion to file a (fourth) amended complaint was granted.

On December 16, 2016, the Board filed a *Fourth Amended Complaint* and added Counts V, VI, VII and VIII and dismissed Count IV.

On January 5, 2017, Respondent filed an *Answer to Fourth Amended Complaint*.

On January 26 a scheduling conference was held with the parties' counsel and the Commission panel. A new hearing date was set for July 10 and an order was entered setting deadlines for pretrial discovery and motions.

On June 9, the Board filed a *Motion for Leave to Amend Complaint*. The motion was granted and the Board filed the *Fifth Amended Complaint* ("*5th Complaint*") on June 21. App. pp. 4-28. Respondent filed an *Amended Answer to Fifth Complaint* ("*5th Answer*") on June 22.² App. pp. 29-35.

On June 23, the parties filed a joint *Stipulation* with attachments, incorporating the admissions set forth in Respondent's *5th Answer*. App. pp. 36-49 (*Stipulation*). The parties agreed to the admission of Board Exhibits 1 through 56 and to close the record. App. p. 49 (*Stipulation*).

On June 28, the Commission accepted the *Stipulation* which included Respondent's admission to each fact and rule violation set forth in the *5th*

² Respondent inadvertently filed an *Answer to Fifth Amended Complaint* (App. pp. 29-35) on June 16, 2017 before the Board's motion to amend was granted on June 21, 2017, and before the *Fifth Amended Complaint* (App. pp. 4-28) was filed on June 22, 2017.

Complaint. Each of the Board's exhibits was admitted and the hearing was cancelled.

The parties filed simultaneous briefs, and on September 26, the Commission filed its *Findings*. App. pp. 99-134. The Commission concluded that the facts set forth in the 5th *Complaint* supported each of the rule violations. App. 99-134. The Commission recommended that Respondent's license be revoked based on the facts and rule violations proving theft and misappropriation set forth in Counts VII and VIII. App. pp. 133-34 (*Findings*). Respondent filed a timely *Notice of Appeal* on October 4, 2017. App. pp. 135-136. Respondent's brief focuses only on the issue of sanction with respect to Counts VII and VIII.

STATEMENT OF FACTS

Count VII: Theft by Unauthorized Use of a Credit Card.

Stipulation. The parties stipulated that the facts set forth in Count VII of the 5th *Complaint* and admitted by Respondent in her 5th *Answer* violated Rules 32:8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness); and 32:8.4(c) (prohibiting lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation). App. pp. 36-49 (*Stipulation*).

Stipulated Facts.

- Respondent represented Johnathon Rawson (“Rawson”), the petitioner in a paternity action seeking to establish him as the biological father of a child born to Hanna R. Vasey, Polk County Case No. DRCR047753, *Rawson v. Vasey*. App. p. 45 (*Stipulation*).
- The original petition was filed on behalf of Rawson by attorney Robert Stuyvesant on May 27, 2014. App. p. 45 (*Stipulation*).
- Respondent filed an appearance on behalf of Rawson on September 25, 2014. App. p. 45 (*Stipulation*).
- Jordyn Eckert (Jordyn) was active in supporting Rawson’s efforts seeking custody of the minor child. There was no attorney-client relationship between Jordyn and Respondent. App. p. 45 (*Stipulation*).
- Jordyn assisted Rawson in paying for Respondent’s legal services. There was no signed fee agreement between Jordyn and Respondent. App. p. 45 (*Stipulation*).
- *Jordyn had a Chase Freedom Visa credit card ending in 6393. Jordyn had exclusive authority over the use of the card.* App. p. 45 (*Stipulation*) (emphases added).
- On January 30, 2015, during a meeting between Jordyn and Respondent, Jordyn authorized Respondent to charge \$5,000 for legal services to

Jordyn's Chase Freedom Visa credit card ending in 6393. App. p. 45
(*Stipulation*)

- Respondent executed the January 30, 2015 transaction by swiping Jordyn's credit card with a Square Magstripe Reader that was plugged into Respondent's iOS or Android device. App. p. 45 (*Stipulation*); App. p. 161 (Ex. 32, p. 1 showing charge made to Jordyn's credit card on "01/30" in the amount of "\$5,000.00" to "SQ *SUAREZ LAW FIRM LLC Des Moines IA").
- On May 22, 2015, the court entered a *Paternity Order Establishing Custody, Visitation and Support*. App. pp. 173-86 ("*Paternity Order*"). The order granted Hannah primary physical custody, and provided that the parties share joint legal custody. App. p. 45 (*Stipulation*); App. pp. 173-86 (*Paternity Order*).
- Over the course of representing Rawson, Respondent was paid approximately \$19,500 in fees. App. p. 45 (*Stipulation*).
- In Respondent's final bill dated May 26, 2015, Invoice No. 2035, it showed Rawson owed Respondent an outstanding balance of \$13,100.13. App. p. 45 (*Stipulation*); App. 205-06 (Invoice No. 2035).
- In June 2015, emails were exchanged between Rawson and

Respondent concerning the outstanding balance. App. p. 45
(*Stipulation*); App. pp. 212-22 (emails).

- On July 5, 2015, Rawson sent the following email to Respondent:

Sandra,

In reviewing the statements that you provided, I have found some discrepancies. Please see attached spreadsheet with comments. It appears there have been some duplicate charges and charges for items that did not occur.

I am filing a complaint with the Iowa Bar Association for what I believe to be inaccurate billing, not receiving monthly statements, and for negligence on my case. In light of your current and previous criminal situation, it brings to light your lack of preparedness in my case.

As of this date, you have charged me for services not rendered and for duplicate services as shown on the attached spreadsheet. It is your responsibility to provide me with a detailed thorough itemization. I need a copy of all monthly billing statements.

Please cease all further communication with me in regards to collections of this account. I will opt for arbitration of the billing for this account if you continue to harass me either by email, text, or phone call. Please submit all further communication to me in writing at the following address. If necessary, I will seek legal counsel on this matter.

John Rawson
22325 Carpenter Street
Hartford, IA 50118

App. p. 45 (*Stipulation*); App. pp. 220-21 (Ex. 38-emails); *see also*
Ex 32, 35, 36 and 37 (credit card charges and payment receipts

showing Rawson and Jordyn had paid Respondent \$19,450).³

- On July 6, 2015, Respondent responded in an email Rawson:

“Good luck with that, so now the word thief is added to the litany of adjectives.”

App. p. 45 (*Stipulation*); App. p. 220 (email).

- On July 9, 2015, Respondent sent Rawson the following email:

“Where would you like to be served? Job home in person?”

App. p. 45 (*Stipulation*); App. p. 222 (email).

- On July 10, 2015, Respondent charged \$5,000 to Jordyn

Eckert’s Chase Freedom Visa credit card ending in 6393

without her authorization in violation of Iowa Code §§

715A.6(1)(a)(3)⁴ and 715A.6(2)(b)(2014)⁵. App. p. 45

(Stipulation) (emphasis added).

- The description of Respondent’s July 10, 2015 charge to Jordyn’s account was “SQ *SUAREZ LAW FIRM LLC.”

³ See also: The following show Jordyn and Rawson had made the following payments to Respondent:

\$5,000	App. p. 161 (Ex. 32 - 1/30/2015 charge to Jordyn’s Chase Freedom card)
\$1,750	App. p. 207 (Ex. 35 - Receipts showing Johnathon’s payments)
\$5,500	App. p. 208 (Ex. 36 - Receipts showing Johnathon’s payments in Sept. and Oct. 2014)
\$7,200	App. p. 208 (Ex. 37 - 2/10/15 charge to Jordyn’s Capital One card)
<u>\$19,450</u>	<u>TOTAL</u>

⁴ Iowa Code § 715A.6(1)(a)(3): A person commits a public offense by using a credit card for the purpose of obtaining property or services with knowledge . . . that use of the credit card is unauthorized.

⁵ Iowa Code § 715A.6(2)(b): If the value of the property or services secured or sought to be secured by means of the credit card is greater than one thousand dollars [\$1,000] but not more than ten thousand dollars [\$10,000], an offense under this section is a class “D” felony.

App. p. 45 (*Stipulation*).

- Respondent's unauthorized charge of \$5,000 to Jordyn's credit card on July 10, 2015 is inconsistent with a claim that Respondent had a "colorable future claim" to those funds. App. p. 45 (*Stipulation*) (emphasis added).
- Jordyn reported the July 10, 2015 unauthorized charge to Chase Cardmember Services and was provided a replacement card; Chase opened a fraud investigation. App. p. 45 (*Stipulation*).
- After Chase conducted a fraud investigation, it reimbursed Jordyn for \$5,025.00 which included Respondent's original unauthorized charge for \$5,000, plus a \$25.00 late fee. App. p. 45 (*Stipulation*); App. p. 172 (statement from Chase Freedom showing charges reversed).
- On September 2, 2015, Jordyn filed a complaint affidavit with the Attorney Disciplinary Board. App. p. 45 (*Stipulation*); App. pp. 223-24 (Ex. 40-*Complaint Affidavit*).

Stipulated Ethical Violations. Respondent admitted to violating the following rules in Count VII:

Rule 32:8.4(b). It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. App. p. 45

(*Stipulation*)

Rule 32:8.4(c). It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. App. p. 45 (*Stipulation*).

Count VIII: Conversion

Stipulation. The parties stipulated that the facts set forth in Count VIII of the 5th *Complaint* and admitted in Respondent's 5th *Answer* violated numerous Iowa Rules of Professional Conduct. App. p. 45-47 (*Stipulation*). For purposes of this brief, the Board will focus solely on those facts supporting violations of Rule 32:8.4(b) (conduct involving a criminal act reflecting adversely on honesty, trustworthiness, or fitness); and Rule 32:8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). App. p. 47 (*Stipulation*).

Stipulated Facts.⁶

- Philip Keny ("Keny") retained Suarez in February 2016 to file a Form I-290B, *Notice of Appeal*, with the U.S. Citizenship and Immigration Services (USCIS), after his Form I-360, *Petition for Amerasian, Widow(er) or Special Immigration* was denied on

⁶ Count VIII stipulated facts are set forth in ¶¶ 94 – 107 in the 5th *Complaint*. App. pp. 71-73.

January 22, 2016. App. p. 45 (*Stipulation*); App. p. 228 (1/22/106 Form I-360 denial).

- There was no signed fee agreement between Respondent and Keny. App. p. 45 (*Stipulation*); App. p. 226, ¶ 4 (Ex. 45 - narrative attached to Keny's *Complaint Affidavit*).
- Keny paid Respondent a total flat fee of \$2,500. Respondent deposited the flat fee into her operating account. App. p. 45 (*Stipulation*); App. p. 229, 231 (Ex. 45-receipts for \$1,500 and \$1,000 payments).
- *On February 23, 2016, Respondent advanced a check to USCIS for \$630 on behalf of Mr. Keny for the specific purpose of covering the cost of the filing fee for Keny's appeal.* App. p. 45 (*Stipulation*) (emphasis added); App. p. 246 (Ex. 45 - copy of the check for \$630 to USCIS written on Respondent's operating account).
- *On February 23, 2016, Respondent mailed the Notice of Appeal Form I-290B to the USCIS Administrative Appeals Office in Washington, D.C. and enclosed the \$630 check for the filing fee.* App. p. 45 (*Stipulation*) (emphasis added).
- *Keny paid Respondent the \$630 she advanced to cover the cost of the filing fee; Respondent deposited the \$630 into her operating account*

on February 25, 2016. App. p. 45 (*Stipulation*) (emphasis added); App. p. 292 (Ex. 56-showing \$630 deposit into Respondent's operating account on 2/25/2016).

- Respondent informed Mr. Keny she had filed the appeal. App. p. 45 (*Stipulation*).
- *Respondent received a letter from USCIS dated March 9, 2016 with both the Notice of Appeal and the \$630 check enclosed.* (Emphasis added.) App. p. 45 (*Stipulation*); App. pp. 257-62 (Ex. 48-USCIS letter indicating: i) the return of enclosed appeal documents to Respondent because Appeal/Motion improperly filed; and ii) the return of the check for \$630, the amount of the filing fee).
- On March 15, 2016 Mr. Keny communicated with Respondent asking whether she had heard from USCIS regarding his appeal. She responded she had not. App. p. 45 (*Stipulation*); App. p. 233 (Ex. 45-“Have you heard from USCIS?”)
- On March 16, 2016, Mr. Keny received a text from Respondent stating, “Mr. Keny, your appeal was denied. I reviewed notice electronically today. Sandra”). App. p. 45 (*Stipulation*); App. p. 234 (Ex. 45-text message from Respondent).

- Keny met with Respondent and retrieved his file. App. p. 45 (*Stipulation*).
- Respondent did not refund Keny the \$630 he had paid to cover the cost of the appeal. App. p. 45 (*Stipulation*) (emphasis added).
- Respondent did not have a colorable future claim to the \$630 and converted the funds to her own use. App. p. 45 (*Stipulation*) (emphasis added).
- Respondent converted the \$630 in violation of Iowa Code §§ 714.1(2) and 714.2(3).⁷ App. p. 45 (*Stipulation*) (emphasis added).

Stipulation to Ethical Violations. Respondent admitted to violating the following rules in Count VIII:

Rule 32:8.4(b). A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. App. p. 47 (*Stipulation*).

Rule 32:8.4(c). It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. App. p. 47 (*Stipulation*)

⁷ Iowa Code § 714.1(2) ("A person commits theft when the person . . . [m]isappropriates property which the person has in trust, or which the person has in the person's possession or control, whether such possession or control is lawful or unlawful, by using or disposing of it in a manner which is inconsistent with or a denial of the trust or of the owner's rights in such property, . . . or appropriates such property to the person's own use, when the owner of such property is known to the person.")

Iowa Code § 714.2(3) (Theft of property exceeding \$500 but less than \$1,000 is theft in the third degree, an aggravated misdemeanor).

ETHICAL VIOLATIONS

While a stipulation regarding rule violations is binding on the parties, it is not binding on the Court. Rule 36.16(3). The Board maintains its burden to prove the rule violations contained in the complaint by a convincing preponderance of the evidence. *Iowa Sup. Ct. Bd. of Prof. Ethics & Conduct v. Wickey*, 679 N.W.2d 1, 2 (Iowa 2004). While this burden is higher than a preponderance of the evidence, the burden in most civil cases, it is lower than the beyond a reasonable doubt burden of proof in a criminal prosecution. *Iowa Sup. Ct. Bd. of Prof. Ethics & Conduct v. Evans*, 537 N.W.2d 783, 784 (Iowa 1995). It is also a lower burden than clear and convincing evidence, which is the highest standard of proof in a civil matter. *Iowa Sup. Ct. Bd. of Prof. Ethics & Conduct v. Ronwin*, 557 N.W.2d 515, 517 (Iowa 1997).

Regarding the rule violations set forth in Count VII, the Commission correctly concluded that the Board proved, by a convincing preponderance, that Respondent violated Rules 32:8.4(b) and 32:8.4(c) when she admitted to using Jordyn Eckert's credit card to obtain \$5,000 while knowing she was unauthorized to do so in violation of Iowa Code §§ 715A.6(1)(a)(3) and 715A.6(2)(b). The Commission provided the following analysis regarding the rule violations:

There is a “convincing preponderance of the evidence” that Suarez violated Rules of Professional Conduct 32:8.4(b) and (c). She committed “a criminal act that reflects adversely on [her] honesty, trustworthiness, or fitness as a lawyer in other respects” . . . and engaged in “conduct involving dishonesty, fraud, deceit, or misrepresentation. . . . *Id.*”

In a typical case, an attorney is cited for violating these rules when the attorney uses funds in a trust account with no colorable future claim to use those funds. *Iowa Sup. Ct. Atty. Disc. Bd. v. Carter*, 847 N.W.2d 228, 234 (Iowa 2014); *see also Iowa Sup. Ct. Atty. Disc. Bd. v. Strand*, 841 N.W.2d 600, 604 (Iowa 2014).

Suarez was on notice that the Board was charging her with misappropriation. *Iowa Sup. Ct. Atty. Disc. Bd. v. Cepican*, 861 N.W.2d 841, 844 (Iowa 2015) (attorney must be on notice of charge of misappropriation which could lead to revocation). The facts and allegations were clearly set forth in the Fifth Amended Complaint. The Board pled that a theft-oriented felony had been committed and that Suarez had no colorable future claim to the funds. . . . *Iowa Sup. Ct. Atty. Disc. Bd. v. Morse*, 887 N.W.2d 131 (Iowa 2016); *Iowa Sup. Ct. Atty. Disc. Bd. v. Cepican*, 861 N.W.2d 841, 844 (Iowa 2015); *Iowa Sup. Ct. Atty. Disc. Bd. v. Carter*, 847 N.W.2d 228 (Iowa 2014). Suarez admitted in her Answer to [the] unauthorized use of a credit card. She admitted to violating the statute which makes doing so a felony. She stipulated to those facts.

The \$5,000 charge on the credit card is very serious. In her Answer and in the Stipulation, Suarez admitted to having committed a felony with regard to these funds. She may very well have had a fee dispute with Mr. Rawson. However, Suarez had no funds in trust to which she may have had a colorable claim. Further, she received an email on July 5, 2015 in which Mr. Rawson disputed whether he owed any fees. In the same email Suarez was instructed to take no further action regarding bills and that the matter would be subject to arbitration. Even if she thought charging [Ms. Eckert’s credit]

card was acceptable prior to July 5, once Suarez knew Mr. Rawson disputed the fee and was not going to pay Suarez without arbitration, she had no authorization to charge the card.

A criminal conviction is not necessary to find a violation of the rules of ethics which pertain to lawyers. *Iowa Sup. Ct. Atty. Disc. Bd. v. Guthrie*, [901 N.W.2d 493, 498 (Iowa 2017)] (citing *Iowa Sup. Ct. Atty. Disc. Bd. v. Thomas*, 844 N.W.2d 111, 116 (Iowa 2014); *Comm. on Prof Ethics & Conduct v. Hall*, 463 N.W.2d 30, 35 (Iowa 1990)). The burdens of proof are different. *Guthrie* [at 498] (citing *Iowa Sup. Ct. Atty. Disc. Bd. v. Green*, 888 N.W.2d 398, 404 (Iowa 2016)).

If misappropriation of funds is alleged there must be “some level of scienter” if revocation is being considered. *Guthrie* [at 498] (citing *Green* [at 404])). The attorney must have “acted knowingly, intentionally, or with the aim to mislead.” [*Guthrie* at 498] (citing *Iowa Sup. Ct. Atty. Disc. Bd. v. Ricklefs*, 844 N.W.2d 689, 698-99 (Iowa 2014)). Suarez was on notice on July 5, 2015 that Mr. Rawson would not pay her. Suarez was not holding money in trust. If Suarez was owed fees she was still not entitled to charge Ms. Eckert’s card. Yet, Suarez knowingly did so without authorization.

App. p. 123-25 (*Findings*); see also *State v. Ennenga*, 885 N.W.2d 219 (Iowa Ct. App. 2016) (Unpublished Opinion 2015 WL 9450656) (evidence showing defendant, without authority, took his step-mother’s credit card and charged items at Walgreens was sufficient to prove he violated Iowa Code § 715A.6).

Regarding Count VIII, the Commission was correct when it concluded that the Board proved, by a convincing preponderance, that Respondent violated Rules 32:8.4(b) and 32:8.4(c) when, after Mr. Keny’s appeal was

dismissed and the funds were returned to Respondent, she failed to reimburse the \$630 he paid for the specific purpose of covering the cost of filing the *Notice of Appeal*, in violation of Iowa Code §§ 714.1(2) and 714.2(3). In addressing the rule violations, the Commission provided the following analysis:

As with the [Count VII] matter, Suarez was on notice that the Board was charging her with misappropriation. *Cepican*, 861 N.W.2d at 845-46. The facts and allegations were clearly set forth in the Fifth Amended Complaint.

The Keny matter is very troubling. . . . She has no reasonable explanation for not returning the \$630 given to her to cover the cost of the appeal. Once that money was refunded/returned, Suarez had an obligation to return it to Mr. Keny. Suarez had no colorable claim to the \$630. She did not address what happened to it in her responses to the Board's inquiries. . . . Suarez admitted that she exhausted Mr. Keny's retainer and kept the \$630 to which she had no claim.⁸

To add to her problems, Suarez made misrepresentations to a tribunal regarding her knowledge of the small claims lawsuit [brought by Mr. Keny's attorney] and receipt of notice thereof. It is unconscionable that, with an allegation of making a misrepresentation to the court pending before the Board since September 2014, Suarez would submit to small claims court her August 17, 2016 [*Motion to Set Aside Default Judgment*] containing two blatant falsehoods.⁹

App. pp. 126-27; (*Findings*).

⁸ Suarez admitted this in the Stipulation. App. p. 45 (*Stipulation*).

⁹ App. pp. 266; (Ex. 51-the Hon. Judge Tigges' September 9, 2016 complaint letter to the Board including attachments regarding Respondent's false statements in her *Motion to Set Aside Default Judgment* wherein she falsely stated that she did not know about the small claims action; and that she had not been personally served.)

SANCTION

In determining the appropriate discipline, the Iowa Supreme Court considers “the nature of the alleged violations, the need for deterrence, protection of the public, maintenance of the reputation of the [bar], and the respondent’s fitness to continue in the practice of law.” *Iowa Sup. Ct. Bd. of Prof. Ethics & Conduct v. Ruth*, 636 N.W.2d 86, 88 (Iowa 2001). The form and extent of the sanction “must be tailored to the specific facts and circumstances of each individual case.” *Iowa Sup. Ct. Atty. Disc. Bd. v. Marks*, 759 N.W.2d 328, 332 (Iowa 2009). While the court gives respectful consideration to the commission’s findings, it is not bound by them. *Iowa Sup. Ct. Bd. of Prof. Ethics & Conduct v. Lett*, 674 N.W.2d 139, 142 (Iowa 2004). The Court also gives consideration to the Commission’s findings of credibility. *Iowa Sup. Ct. Atty. Disc. Bd. v. McGrath*, 713 N.W.2d 682, 695 (Iowa 2006).

The goal of the Rules of Professional Conduct is “to maintain public confidence in the legal profession as well as to provide a policing mechanism for poor lawyering. When deciding on an appropriate sanction for an attorney’s misconduct, we consider the nature of the violations, protection of the public, deterrence of similar misconduct by others, the lawyer’s fitness to practice, and [the court’s] duty to uphold the integrity of

the profession in the eyes of the public.” *Iowa Sup. Ct. Atty. Disc. Bd. v. Humphrey*, 812 N.W.2d 659, 666 (Iowa 2012). The Court also considers aggravating and mitigating circumstances present in the disciplinary action. *Iowa Sup. Ct. Atty. Disc. Bd. v. Iversen*, 723 N.W.2d 806, 810 (Iowa 2006).

ARGUMENT

I. REVOCATION IS THE APPROPRIATE SANCTION BECAUSE RESPONDENT VIOLATED ETHICAL RULES 32:8.4(b) and 32:8.4(c) WHEN SHE PERPETRATED THE FOLLOWING CRIMINAL ACTS: i) UNAUTHORIZED USE OF A CREDIT CARD IN VIOLATION OF IOWA CODE §§ 715A.6(1)(a)(3) AND 715A.6(2)(b); AND ii) CONVERSION OF FUNDS PAID FOR A SPECIFIC PURPOSE IN VIOLATION OF IOWA CODE §§ 714.1(2) AND 714.2(3).

The Commission was correct when it recommended that Respondent’s license be revoked. Respondent’s misconduct involved the most egregious conduct – stealing funds by the unauthorized use of a credit card to which she did not have a colorable future claim; and converting funds to her own personal use that were provided for a specific purpose to which she had no colorable future claim. The Court has repeatedly held there is no gray area regarding sanction when, as in the instant case, an attorney’s misconduct involves theft and conversion. Revocation is the only appropriate sanction as set forth in the following cases:

- *Iowa Sup. Ct. Atty. Disc. Bd. v. Guthrie*, 901 N.W.2d 493, 500 (Iowa 2017) (attorney’s license revoked after stipulating that he misappropriated client trust account funds to which he had no colorable future claim in violation of Rule 32:8.4(c)).
- *Iowa Sup. Ct. Atty. Disc. Bd. v. Green*, 888 N.W.2d 398, 403 (Iowa 2016) (a violation of Rule 32:8.4(c) – conduct involving dishonesty, fraud, deceit, or misrepresentation – will result in revocation even when there is no attorney-client relationship).
- *Iowa Sup. Ct. Atty. Disc. Bd. v. Carter*, 847 N.W.2d 228, (Iowa 2014) (revoking license when attorney withdrew client funds from his trust account that were not in payment of attorney fees or expenses and contrary to his claim that he had a “colorable future claim”).
- *Iowa Sup. Ct. Atty. Disc. Bd. v. Strand*, 841 N.W.2d 600, (Iowa 2014) (evidence sufficient to order revocation of attorney’s license).
- *Iowa Sup. Ct. Atty. Disc. Bd. v. Stowe*, 830 N.W.2d 737, 742 (revoking the license of attorneys who converted client funds is the only way to impress the seriousness of these offenses).
- *Iowa Sup. Ct. Atty. Disc. Bd. v. Nelsen*, 807 N.W.2d 259, 266 (Iowa 2011) (“It is almost axiomatic that we will revoke the license of an attorney who converts a client’s funds to his or her own use.”)

- *Iowa Sup. Ct. Atty. Disc. Bd. v. Carroll*, 721 N.W.2d 788, 792 (Iowa 2006) (Unless the attorney had a colorable future claim to the funds or did not take the funds for his own use, revocation is be ordered.)
- *Iowa Sup. Ct. Disc. Bd. v. Reilly*, 708 N.W.2d 82, 83, 85 (Iowa 2006) (revoking license of attorney who converted client’s settlement funds).
- *Iowa Sup. Ct. Bd. of Prof. Ethics & Conduct v. Bell*, 650 N.W.2d 648, 650, 655 (Iowa 2002) (revoking license of attorney who converted funds from a nonprofit legal organization for which he was treasurer).

**A. THE COURT SHOULD NOT CONSIDER
MITIGATING CIRCUMSTANCES WHEN
DETERMINING AN APPROPRIATE
SANCTION IN THIS MATTER.**

Respondent asserts the Court should consider, in mitigation of Respondent’s misconduct, her treatment for alcoholism, service to the community, her acceptance of responsibility, and that she is the primary parent to her infant daughter.

Respondent takes issue with the holding in the recent *Guthrie* case where the Court held that “it need not consider mitigating and aggravating facts” in matters involving misappropriation. *Iowa Sup. Ct. Atty. Disc. Bd. v. Guthrie*, 901 N.W.2d 493, 500 (Iowa 2017). The Court described mitigating circumstances and noted that Guthrie’s misconduct occurred

during a one-month period during which his substance abuse reached its peak; that he took steps to address his substance abuse issue, sought treatment, and maintained sobriety. Additionally, the Court noted he had committed no further ethical violations. The Court however determined that due to his misappropriation, in violation of Rule 32:8.4(b) and (c), revocation was the appropriate sanction. *Id.*

Even if the Court were to give weight to mitigating circumstances in cases where an attorney has misappropriated funds without a colorable future claim, it should not do so in the instant case. In particular, the Court should note that Respondent's misconduct set forth in Count VIII occurred in 2016 *after* she was released from prison for the two OWI 3rd convictions and while she was in treatment at the OWI Continuum at Broadlawns. In other words, Respondent was in recovery at the time she represented Philip Keny in 2016 and converted the \$630. Rather than serving as a mitigating factor, Respondent's conduct demonstrates a continuing pattern of misconduct and criminal thinking that, in spite of recovery, remains unrestrained.

CONCLUSION

The Board respectfully requests the Court, after reviewing this matter *de novo*, affirm the Commission's conclusion that Respondent violated Rule

32:8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness); and Rule 32:8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation) and revoke Respondent's license to practice law.

CONDITIONAL REQUEST FOR ORAL ARGUMENT

If the Court grants Respondent's request for oral argument upon submission of this appeal, Counsel requests to be heard in oral argument.

Respectfully Submitted,

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ATTORNEY FOR COMPLAINANT

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Date

December 26, 2017